

**URGING THAT FOREIGN INVESTORS BE GIVEN NO GREATER RIGHTS THAN U.S.
INVESTORS IN THE TRADE PROMOTION AUTHORITY ACT OF 2001**

WHEREAS, the U.S. House of Representatives and the U.S. Senate have approved separate legislative proposals, (Trade Promotion Authority Act of 2001) that would grant U.S. trade negotiators broad discretion to include so called "investor protection" provisions in future trade agreements with other countries; and

WHEREAS, the bills list among the principal negotiating objectives of the United States, "seeking to establish standards for expropriation and compensation for expropriation, consistent with United States legal principles and practices," which is subject to broad interpretation and does not bind U.S. trade negotiators to follow U.S. legal precedents; and

WHEREAS, these provisions would expand the opportunities of foreign investors operating in the United States to challenge the action of federal, state and local governments as "regulatory takings," particularly federal, state and local actions restricting the use of property to protect the environment, public health and safety, and public morals; and

WHEREAS, foreign investors would be given the exclusive right to circumvent the U.S. court system and the process in place at the state and local level for addressing takings claims. They would be permitted to sue the U.S. government for financial compensation based on federal, state or local actions before an international arbitration panel which would not be obligated to follow the U.S. Supreme Court's interpretations of the Fifth Amendment on takings claims or to follow U.S. legal precedents in this area; and

WHEREAS, the investor protection provisions in the proposed legislation are modeled after Chapter 11 of the North American Free Trade Agreement, which allows foreign investors to sue for damages if any court or regulatory agency of the federal, state or local government takes an action that can be viewed as a trade barrier; and

WHEREAS, foreign investors have filed billions of dollars in takings claims under Chapter 11 of NAFTA, including a \$1 billion claim pending against the United States that was filed by Methanex Corporation of Canadian (which is the world's largest producer of one of the key ingredients used to make MTBE) in response to the State of California's decision to ban MTBE, a gasoline additive, in order to protect groundwater supplies; and

WHEREAS, the Senate attempted to address some of these concerns before passing its version of the bill by including language that specifically states that foreign investors will not be accorded greater rights than U.S. investors in the United States but it does not establish clear standards or an effective enforcement mechanism to ensure that this objective is carried out,

NOW, THEREFORE, BE IT RESOLVED, that The United States Conference of Mayors urges House and Senate Conferees on the Trade Promotion Authority Act of 2001 to include language providing that decisions and other orders of the courts of the United States, including the U.S. Supreme Court and the highest courts of states, cannot be challenged before international arbitration panels as violations of investment provisions in trade agreements; and

BE IT FURTHER RESOLVED, that The United States Conference of Mayors urges that language also be included in the conference report that ensures that trade agreements that include investment provisions may be presented to Congress for ratification pursuant to this legislation only if the agreements provide that international arbitration panels shall not be

empowered to accord foreign investors operating in the United States greater rights than U.S. citizens possess under the U.S. or State Constitutions; and

BE IT FURTHER RESOLVED, that the President and Congress are urged to provide state and local sovereignty safeguards in the Free Trade Agreement of the Americas by establishing general exceptions to preserve core governmental functions that protect the environment, public health and safety, and the welfare of citizens; and by requiring international dispute resolutions panels to honor principles of deference to domestic legislative judgment..